

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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|--------------------------------|---|--------------------|
| TESTING TECHNOLOGIES INC. and | : | ECF CASE |
| MG PREP, INC., | : | |
| | : | |
| Plaintiffs, | : | 07 Civ. 7360 (WHP) |
| | : | |
| -against- | : | |
| | : | |
| MO MEDIA, LLC, PAUL OWENS, and | : | |
| JOHN DOES 1-10, | : | |
| | : | |
| Defendants. | : | |

**REPLY DECLARATION OF AL J. DANIEL, JR. IN SUPPORT OF
DEFENDANT PAUL OWENS' MOTION TO DISMISS OR TRANSFER**

AL J. DANIEL, JR. declares and states:

1. I am a partner with Cowan, DeBaets, Abrahams & Sheppard LLP, counsel for defendants Mo Media, LLC and Paul Owens in this case. I make this declaration in further support of defendant Owens' motion to dismiss for lack of venue or to transfer the action to the Eastern District of Texas and to submit pertinent documents.

2. Sean Selinger states that he is the owner of plaintiff Testing Technologies, Inc. in his two declarations in opposition (Dkt. ##26 and 38) to the separate motions of defendants Mo Media, LLC and Paul Owens to dismiss the action or transfer it to the Eastern District of Texas, where both defendants reside.

3. Mr. Selinger's opposing declarations make various assertions regarding a website called www.testpreview.com. Sean Selinger Declaration (undated) (Dkt. #26) ¶¶ 8-9 in opposition to Mo Media's motion to dismiss ("Selinger Mo Media Decl."); Declaration of Sean Selinger dated February 24, 2008 in opposition to Owens motion to dismiss or transfer ¶ 3 ("Selinger Owens Decl."). Mr. Selinger apparently believed that Owens and/or Mo Media

owned and controlled www.testprepreview.com. As explained below and in the accompanying reply declaration of Paul Owens dated March 5, 2008

4. A civil action for declaratory and injunctive relief was filed by Enoch and Fay Morrison against Testing Technologies, Inc. (a plaintiff in the above-captioned action) in the United States District Court for the Eastern District of Texas on February 26, 2008. Enoch and Fay Morrison against Testing Technologies, Inc., Civil Action No. 9:08-cv-00038 (E.D. Tex., filed Feb. 26, 2008) (the “Enoch Morrison Action”). Attached as Exhibit A are a true copy of the Complaint, including its Exhibit A, and the Docket in the Enoch Morrison Action, which I downloaded from the PACER site of the Eastern District of Texas.

5. In the Enoch Morrison Action, the plaintiffs Enoch and Fay Morrison state that they are owners of the website www.testprepreview.com, are residents of the Eastern District of Texas, and have been threatened by Sean Selinger, the owner of Testing Technologies, Inc., with legal action “for being the registrant of illegal websites and actively participating in deceptive promotions.” Enoch Morrison Action, Complaint ¶¶ 3, 13-17, and Ex. A thereto.

6. I am informed that the depositions noticed by plaintiff Testing Technologies, Inc. in this action of Peter Morrison and Paul Owens, co-owners of defendant Mo Media, LLC, were taken on February 28, 2008 in Beaumont, Texas. Attached as Exhibit B are true copies of the cover pages and pages 2-3 of the deposition transcripts sent to me by co-counsel Jeff Roebuck, Esq., which show the date of the depositions and the appearances of counsel. Plaintiff Testing Technologies, Inc. was represented by local Texas counsel, as were deponents Peter Morrison and Paul Owen. No one appeared at the depositions on behalf of plaintiff MG Prep, Inc. Neither Sean Selinger nor Testing Technologies’ New York counsel, John Selinger, Esq., attended these depositions.

7. The depositions of Mo Media and Owens were taken subject to the stipulation of counsel that they would be subject to the terms of a proposed Protective Order signed by counsel for Testing Technologies, Mo Media, and Owens, pending its review and approval of the Court. The proposed Protective Order will shortly be submitted to the Court for review.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 5, 2008
New York, New York

s/ Al J. Daniel, Jr. (AD 9333)